IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

OP.No. 39557 of 2002(H)

PETITIONER:

P.NANDAKUMAR, JOINT REGIONAL TRANSPORT OFFICER, PERUMBAVOOR.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, TRANSPORT DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM**

2. **THE DEPARTMENTAL PROMOTION COMMITTEE (HIGHER) TO PREPARE A SELECT LIST FOR PROMOTION TO THE CATEGORY OF REGIONAL TRANSPORT OFFICER IN THE MOTOR VEHICLES DEPARTMENT, REP.BY ITS CONVENER SECRETARY TO GOVT.,TRANSPORT DEPARTMENT, GOVT. SECRETARIAT, THIRUVANANTHAPURAM**

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.39557/2002

ORDER ON CMP. NO66403/2002 IN OP. NO. 39557/2002

DISMISSED

01.08.2007 SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE SENIORITY LIST OF MOTOR VEHICLE INSPECTORS AS ON 31.12.90 .

EXT.P2:- COPY OF THE GOVERNMENT ORDER DT. 9.9.94.

EXT.P3:- COPY OF THE GOVERNMENT ORDER DT. 1.7.93.

EXT.P4:- COPY OF THE GOVERNMENT ORDER DT. 8.3.94.

EXT.P5:- COPY OF THE GOVERNMENT ORDER DT. .3.4.2000.

EXT.P6:- COPY OF THE SELECT LIST.

EXT.P7:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DT. 20.3.99.

EXT.P8:- COPY OF THE SHOW CAUSE NOTICE DT 13.11.2000.

EXT.P9:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO EXT.P8 SHOW CAUSE NOTICE.

EXT.P10:- COPY OF THE JUDGMENT DT. 17.4.01 IN IP.13363/2001.

EXT.P11:- COPY OF THE SELECT LIST PUBLISHED AS PER NOTIFICATION DT. 21.12.01.

E.XT.P13:- COPY OF THE ORDER DT. 23.10.02.

/TRUE COPY/

P.A.TO JUDGE

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T.R.RAMACHANDRAN NAIR, J.

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O.P.No.39557 of 2002-H.

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Dated this the 1st day of August, 2007.

J U D G M E N T

The petitioner is challenging the denial of promotion to the post of Regional Transport Officer. The main prayer in the writ petition is to direct the respondents to promote the petitioner as R.T.O. before 31.12.2002. Admittedly the petitioner has retired from service without getting the desired promotion. Still the learned counsel for the petitioner argued that the matter has to be examined in the light of the averments made in the writ petition.

2. The petitioner, at the time of filing the writ petition, was working as Joint R.T.O. In the provisional seniority list of Motor Vehicle Inspectors the petitioner was Sl.No.47. It was finalised by the Government wherein he was shown as Sl.No.48. Later, he was provisionally promoted as Joint Regional Transport Officer under Rule 31(a)(i) of the K.S. & S.S.R. as per Ext.P2 dated 9.9.1994. Earlier while working as Motor Vehicle Inspector he was placed under suspension as per Ext.P3 dated 1.7.1993 and thereafter disciplinary action was continued against him. The same was finalised by the Government as per order dated 8.3.1994 (Ext.P4) wherein he was imposed with a punishment of barring two increments with cumulative effect. While so, the D.P.C. has published select list on 16.1.1999 for promotion to the

category of Motor Vehicle Inspector.

3. The apparent grievance of the petitioner is that his junior Sri.Abdul Azeez Yousef Sait was included as Sl.No.11 there along with some other juniors also, but he was not included. He filed a statutory representation Ext.P7 and that was pending before the competent authority. It is at that stage he was issued with Ext.P8 show cause notice proposing to revert him from the post of Joint R.T.O. to the category of Motor Vehicle Inspector. This was answered by him as per Ext.P9. Meanwhile the DPC was convened for preparing the select list of Regional Transport Officer from the category of Joint Regional Transport Officer. It is at that stage he invoked the jurisdiction of this Court by filing OP.No.13363/2001 which was disposed of directing to consider Ext.P7 representation by the DPC. Ext.P10 is the said judgment. Ext.P11 is the select list published by the DPC for promotion to the category of Joint Regional Transport Officer and even at that time the request of the petitioner for inclusion in Ext.P6 was not acceded to. Again the DPC convened on 17.12.2001 for preparing select list for promotion to the post of R.T.O. and Ext.P12 is the select list published in the Gazette by the DPC. Therein also the juniors of the petitioner have been included. The petitioner challenged the same by filing OP.No.1362/2002. In the meanwhile he had challenged the disciplinary action before the Government and by Ext.P13 punishment was modified also. As per the

modified order the penalty imposed is barring of two increments without cumulative effect. Relying upon Exts.P12 and P13 the petitioner contends that his exclusion by the DPC is not correct.

4. In the counter-affidavit filed by the respondents it has been pointed out that when the DPC prepared the select list for the post of Joint Regional Transport Officer in its meeting held on 19.1.1998 the petitioner was superseded due to bad records of service as he was undergoing punishment pursuant to the order GO.(Rt).No.576/94/PW&T dated 8.3.1994. It is also averred that the DPC later had in the meeting held on 1.8.1998 and subsequently on 25.8.1998 prepared the select list for the post of Joint Regional Transport Officer/Joint Regional Transport Officer (Administration)/Assistant Secretary, STA for the years 1995, 1996, 1997 and 1998. While so, the service records of the petitioner for the years 1992 to 1997 were considered by the DPC and the petitioner was found ineligible due to the punishment awarded to him. It is also pointed out that he was issued with a memo of charges for major penalty as per Government letter No.15199/C3/00/Tran. dated 7.4.2001 and finally the Government had cancelled the charges. Apart from that he was issued with a memo of charges as per Government letter No.982/C3/00/Tran. dated 20.4.2000. The Government after examining the written statement filed by the petitioner was of the view that the allegations should be enquired in detail and an officer was

appointed to conduct a formal enquiry. After completing the enquiry a report had been forwarded to the Government also and the said matter is pending disposal.

5. The summary of the stand taken by the respondents is that the non-inclusion of the petitioner by the DPC for consideration for promotion to the post in question was for sound reasons ie., he was undergoing one punishment and was facing another enquiry also. Therefore, even though in Ext.P13 the Government had reduced the penalty the position is that he was not liable to be included. Hence at this distance of time, the declaration sought for that he was entitled for promotion cannot be granted by this Court. The non-inclusion of petitioner is for valid reasons. Hence I am of the view that the proceedings of the D.P.C. under challenge are not liable to be interfered with. Petitioner has already retired from service also. Therefore the writ petition is dismissed. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-